



Metropolitan Transportation Authority

State of New York

March 10, 2022

Via ECF

Hon. Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street,
New York, NY 10007

Re: **Thomas v. Five Star Electric Co., et al., 18-CV-3691**
Letter Responding to Defendant Five Star's March 10, 2022 Status Report

Dear Judge Torres:

I represent Defendant Metropolitan Transportation Authority ("MTA") in the above-referenced action. I write to briefly respond to Defendant Five Star Electric Company's March 10, 2022 status report letter (Dkt. No. 107) following the March 4, 2022 Notice and Final Order issued by the New York State Division of Human Rights ("NYSDHR").

As Five Star's letter indicates, Magistrate Judge Lehrburger issued two separate Reports and Recommendations ("R&R") currently pending before the Court. One, issued August 23, 2019 (Dkt. No. 74), was concerned with two separate motions to dismiss by Five Star and MTA and recommended that both be granted. Another, issued January 5, 2022 (Dkt. No. 97), recommended denial of plaintiff's motion for a writ of prohibition.

Although Five Star's letter does not elaborate on this point, each defendant moved to dismiss for distinct reasons. The issues Five Star's letter discusses concerning its motion do not affect the MTA's motion. Unlike Five Star, the MTA made no argument concerning the election of remedies doctrine. Instead, the MTA argued that dismissal was warranted for it simply because the MTA lacked an employment relationship with Thomas, the complaint failed to state a claim against the MTA, and Thomas failed to exhaust administrative remedies prior to filing suit against the MTA. The August 23, 2019 R&R recognized that the MTA was "correct as to all arguments" and recommended that the Court grant its motion to dismiss (*see* Dkt. No. 74 at 21-35).

The MTA has not been a party to the NYSDHR proceedings, and the NYSDHR's Notice and Final Order has no effect whatsoever on the grounds for dismissing the MTA from this action. For the reasons stated in the MTA's motion papers and in the August 23, 2019 R&R, the Court should fully adopt the August 23, 2019 R&R with respect to the portions concerning the MTA and dismiss the complaint as against the MTA. The MTA takes no position as to the effect of the Notice and Final Order on the other motions pending before the Court.

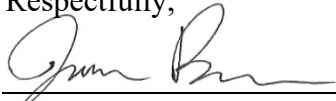
The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Construction & Development
MTA Bus Company

Respectfully,

A handwritten signature in black ink, appearing to read "Jason Barnes", written over a horizontal line.

Jason Douglas Barnes

Associate Counsel

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CC: All Parties, via ECF